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IN THE

Supreme Court of the United States

October Term, 1949.

JAMES T. RITTER, - - - - - Petitioner,

versus

COMMONWEALTH OF KENTUCKY, - Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY AND BRIEF IN SUPPORT THEREOF.

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No. _____.

JAMES T. RITTER, - - - - *Petitioner,*

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COMMONWEALTH OF KENTUCKY, - *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY AT FRANKFORT, KY.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

This petitioner, James T. Ritter respectfully presents to this Court this his petition for a writ of certiorari addressed to the Court of Appeals of the Commonwealth of Kentucky, commanding said Court and the Clerk thereof to certify to this Court the record and proceedings of the case in said Court, wherein this petitioner was appellant, and respondent, Common-

wealth of Kentucky, was appellee, together with its opinions therein for the review and determination of said case by this Court. The judgment of the Court of Appeals of Kentucky affirming the judgment of the Circuit Court of Boyle County, Kentucky, was entered on June 10, 1949. On June 14, 1949, petitioner sought an appeal to this Court from the judgment at the Court of Appeals of Kentucky, and a stay of mandate, and on the 14th day of June, 1949, petitioner's motion was granted and mandates stayed until final disposition of the case in this Court (R. 94).

SUMMARY OF MATTERS INVOLVED.

The record discloses that during the night of June 5, 1948, two members of the Kentucky State Highway Patrol, after trailing petitioner's automobile for about 500 feet, without any warrant for its seizure and without any reason for suspicioning that the car or the occupants had been or were at that time involved in the commission of a public offense, stopped the automobile owned by this petitioner, but which was being driven by one Lyndon Loveless. Petitioner, who is the owner of the automobile together with his wife were seated on the rear seat of the car. The Patrolmen caused the driver to get out of the car and while one of them walked him up and down the road on the pretext of seeing if the driver was drunk, the other Patrolman, over the vigorous protests of this petitioner, secured the keys from the car, opened the trunk of the car where he found 8 cases of beer, a fifth and a pint

of legal bond whiskey, and one case of gin, on all of which the tax had been paid and stamps affixed. The Patrolmen then, petitioner still protesting, searched the interior of the automobile where they found a pint of gin on which the tax had been paid and the stamps duly affixed. The driver, having no operator's license, was then placed under arrest for operating a motor vehicle without a permit and for reckless driving and your petitioner was arrested for being drunk and for illegally transporting intoxicating liquors in local option territory for the purpose of sale. The seizure, search and arrest occurred in Boyle County, Kentucky. At the regular September, 1948 term of the Boyle County Circuit Court this petitioner, after his motion to quash the warrant on which he was charged, had been denied, was found guilty as charged in the warrant and a jury fixed his punishment at $100.00 fine and 60 days confinement in jail. An appeal to the Court of Appeals of Kentucky, a court of last resort and highest court in the Commonwealth of Kentucky, was prayed from the judgment of the Boyle Circuit Court, and on June 10, 1949, the Court of Appeals of Kentucky by memorandum opinion overruled petitioner's motion for an appeal, thereby affirming the judgment of the Boyle Circuit Court. The offense being a misdemeanor, no petition for rehearing is allowed. The facts will be more fully discussed in petitioner's brief in support of this petition.

JURISDICTION.

The jurisdiction of this Court to entertain this petition for a writ of certiorari is as provided for in Section 237 of the Judicial Code as amended January 31, 1928 (Title 28, U. S. C. A. 344).

QUESTIONS PRESENTED.

1. Whether the search of petitioner's automobile and the subsequent arrest of this petitioner and the seizure of his property is in violation of the Fourth Amendment and Fourteenth Amendment to the Constitution of the United States.

2. Whether by introducing in evidence the beverages seized in petitioner's automobile and by permitting the State patrolmen to testify concerning their seizure was causing this petitioner to testify against himself in violation of the Fifth Amendment to the Constitution of the United States.

SPECIFICATIONS OF ERRORS TO BE URGED.

The Court of Appeals of the Commonwealth of Kentucky erred:

1. In denying petitioner's motion for an appeal from the judgment of the Boyle Circuit Court.

   (a) In failing to hold that by the proceedings, trial, verdict, and sentence of the Boyle Circuit Court petitioner was denied his right to

be free and secure in his person and property from unreasonable searches and seizures and was denied Due Process of Law.

(b) In failing to hold that by the proceedings, trial, verdict and sentence of the Boyle Circuit Court, petitioner was compelled to be a witness against himself.

REASONS FOR GRANTING THE WRIT OF CERTIORARI.

1. The decision of the Court of Appeals of Kentucky in overruling petitioner's motion for an appeal and in failing to reverse the judgment of the Boyle Circuit Court, presents for decision an important question of local and public law in conflict with, has not been decided by, but should be settled by this Court.

2. So that indiscriminate stopping of automobiles without cause, or reason under the pretext of inquiring of the operator for a driver's license, when the main and basic reason of stopping the automobile is for an exploratory search, will be stopped in Kentucky.

This petitioner presents herewith a certified copy of the entire record in said cause, including the proceedings in the Court of Appeals of Kentucky and the opinions of said Court.

WHEREFORE, this petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the Court of Appeals of Kentucky sitting at Frankfort, Kentucky, commanding the said Court to certify and send to this Court, on a day to be

designated, a full and complete transcript of the record and all proceedings of the said Court of Appeals of Kentucky had in said cause, and that the said cause may be reviewed and determined by this Honorable Court as provided by law and that the said judgment of the Court of Appeals of Kentucky may be reversed by this Honorable Court, and for such further relief as may seem proper, this petitioner will ever pray.

JAMES T. RITTER, *Pro Se.*,
Petitioner.

MARVIN J. STERNBERG,
Jamestown, Kentucky,
Louisville, Kentucky,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

THE FACTS AS DISCLOSED BY THE RECORD.

The undisputed facts in this case disclose that on June 5, 1948 Mr. James T. Ritter, a one legged man together with his wife and friend, Mr. Lyndon Loveless, left Somerset, Kentucky, and went to Lexington, Kentucky to visit friends and to do some shopping. Mr. Ritter was formerly employed by the Southern Railroad as a boiler maker, had, about 13 months prior to the arrest been engaged in the illegal sale of intoxicating liquor, had been a member of the Kentucky State Highway Patrol and was at the time of his arrest and is now operating a small grocery and dry goods store in Somerset, Kentucky. While in Lexington, Mr. Ritter over-imbibed and became drunk. Realizing that he, in his condition, was not able properly to operate his car, prevailed upon Mr. Loveless to not drink any intoxicants, stay sober, and to drive the car back to Somerset that night. The automobile involved is owned by your petitioner, James T. Ritter. Sometime during the day, Mr. Loveless purchased 8 cases of beer a case of gin, and without the petitioner's knowledge, placed them in the trunk of the car. This petitioner or someone for him purchased a fifth of whiskey and a pint of whiskey, the fifth was for petitioner's own use and the pint he had to give to Mr. Loveless as a reward for staying sober and driving the car home. After visiting all day in Lexington, the party, about dark,

started toward Somerset, Kentucky. Enroute the car was stopped several times to permit Mr. Ritter to relieve himself from an upset stomach condition caused by over-drinking and to permit him to take a drink of gin in order to satisfy his crave for stimulants. On State Highway 150, between Standiford, Kentucky and Danville, Kentucky, Mr. Ritter, your petitioner, directed Mr. Loveless to stop the car so that he, your petitioner, could take a drink. While thus stopped, Patrolmen Lee O. Atkinson and Leonard Jarvis, traveling in the opposite direction of your petitioner, passed them and after proceeding about two or three hundred feet beyond the parked car, turned about and proceeded toward the parked vehicle. The driver of petitioner's car recognized the Patrol Car and told petitioner that the State Highway Patrol had passed. Petitioner then directed Loveless to drive on.

The Patrolmen did not, prior to this occasion, know James T. Ritter, his wife, or Lyndon Loveless. There was nothing suspicious about the car or its occupants that would indicate that they were involved in the commission of a public offense. From hereout, the facts are in dispute. The Patrolmen, corroborating one another, testified that after turning their car around they noticed the parked car start up and be driven from one side of the road to the other in a reckless manner. The Patrolmen after following for about a distance of five hundred feet, then turned on their red light and siren, causing your petitioner's vehicle to be driven to the side of the road and stopped. As detailed by the Patrolmen, the following took place:

Patrolman Atkinson requested the operator of the car to get out, that he wanted to talk to him, and the driver, in obedience did get out of the car. Having been asked by the Patrolmen for his operator's license, they were advised they would be found in the car over the sunvisor. The Patrolmen state they procured a license from the place in the car where they had been told they would find the driver's license, but did not find a license for Mr. Loveless. They did, however, find the driver's license of Mr. Ritter, your petitioner. Not having found a driver's license for Mr. Loveless, the Patrolmen advised him that they would have to place him under arrest for operating a vehicle without a license and reckless operation of a motor vehicle on a public highway. Neither of the Patrolmen remembered whether one of them got the keys out of the car or whether Mr. Loveless got the keys for them at their demand, or whether they or Mr. Loveless opened the trunk of the car. After having opened the trunk of the car and finding the beer, gin, and whiskey, the officers proceeded to search the inside of the car where they found one pint of gin about two-thirds empty. Their evidence discloses that as they attempted to make the search, Mr. Ritter, who had been sitting in the rear seat with his wife, got out of the car and fought with the officers and used abusive language toward them. The officers testified that it took them between thirty and forty-five minutes to subdue Mr. Ritter; that he insisted that the intoxicants were his and the officers had no right to search the car as he had done nothing. The officers testified that both Mr. and

Mrs. Ritter were drunk but that Mr. Loveless, who was operating the car, was not drunk although he had admitted taking a couple of beers. The officers agreed that their only purpose in coming back to the place where the car was parked was to make a cursory investigation; that there had been no offense committed in their presence except that after they had turned and while they were following the car, it had been driven all over the highway and in a reckless manner.

The three remaining witnesses testified that the reputation of your petitioner among his neighbors and acquaintances and those who knew him generally with reference to dealing illegally in alcoholic beverages in dry territory was bad.

This concluded the testimony for the Commonwealth, after which your petitioner made a motion for a direct verdict which was overruled.

In defense of the charge made against your petitioner, he testified that on the occasion in question he had caused the car to be stopped as "I was a'-fixing to take me a drink" (R. 67); that at this time he had sobered up from the condition he was in when leaving Lexington, Kentucky, and he knew and realized Mr. Loveless was driving the car properly, was not zigzagging it about on the road and that after Mr. Loveless, the operator of the car, had told him that a Patrol Car had passed, he then instructed Mr. Loveless to drive on. He testified that he did not start a fight with the Patrolmen nor curse or abuse them; that after the Patrolmen had walked Mr. Loveless up and down the road, taken the keys from the car, over petitioner's

protest, had opened the trunk of the car and searched it, your petitioner still protesting, the officers jerked him out of the car, but on account of petitioner's wooden leg, he was encountering difficulty in getting out, and when petitioner's wife begged the officers not to hit him, informing them of your petitioner's crippled condition, one of them knocked her down.

Mr. Lyndon Loveless who was driving petitioner's car on the occasion in question, stated that he did not give the officers permission to search the car; that he was not drunk; that he did not get the car keys for them. In detailing actually what happened after the Patrolmen stopped him, he stated that one of the officers got him out of the car and while walking him up and down the road to see if he was drunk, the other one, Mr. Atkinson, took the keys from the car, opened the car trunk and found the beer, whiskey and gin. That after the liquor was found and not until that time did either of the officers arrest him or threaten to arrest him except for saying "he had me for not dimming my lights for a Highway Patrolman" but after finding the liquor the other officer said "Well we are going to have to arrest you for reckless driving." This witness admitted ownership of the gin and beer and stated that he had purchased it from Bill Deneen at Lexington, Kentucky. He admitted that the operator's license he had was one issued in Ohio but had expired and he had not had it renewed because he had been in ill health. This witness testified that he was not driving recklessly; that he took no part in any scuffle between Mr. Ritter and the Patrolmen which

lasted only a couple of minutes, but did see one of the Patrolmen hit Mrs. Ritter and knock her down.

Your petitioner's wife, Elois Ritter, 25 years of age, stated that she, her husband, and Mr. Loveless left Lexington about dark on June 5, 1948, to return home; that the car was stopped on the occasion in question so that her husband could take a drink; that the Patrolmen, after stopping her husband's car, took the driver out and walked him up and down the road to see if he was drunk and while this was going on the other Patrolman took the keys out of the car, unlocked the trunk of the car and searched it and the car. She stated that after the Patrol car had first passed, they had only driven about a 100 feet until they were caused to stop; that Mr. Loveless was not driving fast; was not driving all over the road but was driving on his side of the highway; that she was sober and that when she requested the Patrolmen to stop fighting her husband, one of them hit her and knocked her over a big fill.

This constitutes a summary of the evidence that pertains to the issue.

ARGUMENT.

Petitioner Was Denied His Right To Be Free From Unreasonable Searches and Seizures and Denied Due Process of Law.

The incident giving rise to the need for a presentation of the petition to this Court likely would never have been made necessary if a person with less determination then James T. Ritter had been the subject. The procedure followed by the Patrolmen in carrying out their mission is not too much contrary to the usual procedure in Kentucky. The subject, however, although a crippled is a person of the old school, although not old in years, who believes that rights, life and liberty are things to be fought for and if they are to be preserved, must be guarded by the continuous and constant vigil of each and every citizen of this great country. Complacency and the easy way out is no part of his make-up. Had he wanted an easy way out, he would have paid a small fine in the County Court and quit at that point, nor can it be said that this petition for a writ of certiorari is made for a stall so that this petitioner can wear out the car involved in the melee before a final determination is had. The car was taken in custody on June 5, 1948, and is still in the custody of the law; petitioner's motion for a release of the car upon the execution of a bond was overruled and petitioner was denied possession of his car. Unless he is successful in this proceeding, your petitioner will never recover his automobile. Petitioner's counsel herein

did not represent him in any of the prior proceedings nor even knew of this petitioner until called upon to review the record and prepare the petition for a writ of certiorari in this Court. Counsel has, since becoming interested in this case, given attention to determine the characteristics and idiosyncrasies of the players in this drama of life and has determined that the petitioner's sincerity in fighting for his rights is only surpassed by the result of the jurors' deliberation.

This Court in the recent case of McDonald, *et al.* v. United States, 69 S. Ct. 191, reaffirmed the guarantee provided by the Fourth Amendment to the Constitution, *e. g.*:

> "This guarantee of protection against unreasonable searches and seizures extends to the innocent and guilty alike. It marks the right of privacy as one of the unique values of our civilization and, with few exceptions stays the hands of the police unless they have a search warrant issued by a magistrate on probable cause supported by oath or affirmation. And the law provides as a sanction against the flouting of this constitutional safeguard the suppression of evidence secured as a result of violation, when it is tendered in a Federal Court. Weeks v. United States, 232 U. S. 383, 34 S. Ct. 341, 58 L. ed. 652."

The United States sought to sustain lawfulness of the search on the lawfulness of the arrest and so justified the search and seizure without a warrant. This Court in no uncertain words but in very few of them repudiated this theory, holding: "We do not stop to

examine that syllogism for flaws. Assuming its correctness, we reject the result."

> "The guaranty of freedom from unreasonable searches and seizures is construed as recognizing a necessary difference between a search of a dwelling house or other structure in respect of which a search warrant may readily be obtained and a search of a ship, motorboat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. However, those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent officer authorized to search probable cause for believing that their vehicles are carrying contraband or illegal merchandise. The measure of the legality of such a seizure is, therefore, that the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes contains contraband goods which are being illegally transported. In cases where the securing of a warrant before seizure of property being transported on a highway is reasonably practicable, it must be secured, and when properly supported by affidavits and issued after judicial approval, it protects the seizing officer against a suit for damages. Where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause." 47 *American Jurisprudence,* title, Searches and Seizures, Section 18.

What was in the minds of the Patrolmen as they passed the stopped car, turned and came back, only they and their Maker know, but we know by their actions, and their actions speak louder than words. By your actions, you shall be known—we cannot hear what you say because of what you do. The Patrolmen saw petitioner's car standing still on the highway, it wasn't wobbling over the highway at that time, the Patrolmen turned about and the parked car started off, not speeding, and after proceeding but a short distance, was stopped by the Patrolmen, no chase or effort to escape was made; the picture is clear, is unfolded like a planned play. Is it possible that the Patrolmen in a mild or even gentle tone of voice requested the driver to get out of the car? It is possible that such things could happen, but they didn't happen in this case. Again the facts tell the story. One of the Patrolmen grasps hold of the arm of the driver and walks him up and down the road to see if he is drunk, this in the night time, while the other Patrolman, over the protests of this petitioner secured the car keys, unlocked the trunk of the car, and commenced his search. We must bear in mind that searches and seizures are frowned upon at all times and when consummated without a warrant supported by an affidavit particularly describing the place to be searched and the thing to be seized, it is an unreasonable search and seizure and a conviction based upon evidence thus obtained, cannot stand. Weeks v. United States, 232 U. S. 383, 34 S. Ct. 341, 58 L. ed. 652; Gouled v. United States, 255 U. S. 298, 41 S. Ct. 261, 65 L. ed. 647. We fully

realize that this Court has in the last few years, particularly since the advent of the automobile and due to the exigencies of the time relaxed the need for a warrant to search an automobile. Even though the rule is relaxed the courts most vigorously demand that more than suspicion must exist, but there must be reasonable grounds to believe that the persons and the automobile are participating in the commission of a public offense before such searches will be upheld. There was before the Supreme Court of the State of Tennessee, the case of Charlie Cox, plaintiff in error, v. State of Tennessee, 181 Tennessee Reports 344, 181 S. W. 2d 338, which is a case similar to the one at Bar. In that case the Court held that:

> "In order for a search to be lawful, when the Patrolman stops a car to examine a driver's license, it should be made to appear that the examination is made in good faith and not as a mere blind or an excuse for a failure to procure a valid search warrant."

The principles do not change but the facts to which the principles are to be applied do change. Every case must be judged on its own merit—each tub must stand on its own bottom—so let it be in this case. The Patrolmen, having nothing better to do, seeing the car stopped on the highway determined to do a little investigating, but before being able to turn their car about and return to the stopped car, it moves away. The officers, not to be out-done, force the car to stop and then they explore their quarry. Reasonable inquiry could be made and would not be questioned, but

an exploratory search such as was carried out in this case can only find criticism and condemnation. The authorities are in accord with the proposition that general exploratory searches for the purpose of undercovering evidence of crime, or for obtaining information either with or without a search warrant is unreasonable and therefore within the Constitutional Ban. Boyd v. United States, 116 U. S. 616, 6 S. Ct. 524, 29 L. ed. 746; Silverthorne Lumber Company v. United States, 251 U. S. 385, 40 S. Ct. 182, 64 L. ed. 319; Gouled v. United States, 255 U. S. 298, 41 S. Ct. 261, 65 L. ed. 647; Amos v. United States, 255 U. S. 313, 41 S. Ct. 266, 65 L. ed. 654.

Both of the Patrolmen admit that Loveless, the driver of the petitioner's car was not drunk. We are not advised as to the hour of the night when the seizure was made but Mrs. Ritter, wife of this petitioner, stated that they left Lexington, Kentucky, about dark, which on June 5th, would be about 7:30 p. m. Central Standard Time. The trip from Lexington to the point where they had stopped, took about two and a half or three hours, making the affair take place at about ten or ten-thirty, p. m. We can reasonably assume that there were no automobiles passed from the time the Patrolmen first saw the stopped car until after the search, seizure, and arrests had been made. If there had been any cars passed, we would undoubtedly have heard about it for the Patrolmen would have testified concerning that matter in order to substantiate their reckless driving story. What constitutes reckless driving in one case may not be reckless driving in another.

"As a general rule what constitutes reckless driving is to be determined from all the surrounding circumstances where the statute does not specifically declare what particular acts shall constitute the offense. What constitutes reckless driving under some conditions may not be such under other conditions. As a general rule, something more than mere negligence in the operation of an automobile is necessary to constitute the offense of reckless driving; generally the offense denotes operation of an automobile under such circumstances, and in such a manner, as to show a willful or reckless disregard of consequences." 5 *American Jurisprudence,* title, Automobiles, Section 12.

As each case must be judged by itself, we consider the charge in this case in an effort to learn the true facts, in light of what happened. The driver, Loveless, recognized the Patrol Car (at that time they were painted white) and started up the petitioner's car. The driver admittedly was not drunk, he knew he had beer, gin, and whiskey in the car and was in local option territory. Under these circumstances and in the light of these facts, it is not logical that Loveless would drive the car in a reckless manner but would be more careful than he ordinarily would have. The road was straight and the driver could have readily seen any cars that approached for quite a distance. Under those conditions, there was no reckless driving, even if he did drive from one side of the road to the other, which did not happen. The charges seem too thin to hold up under the glaring light and weight of the admitted

facts. The Patrolmen were on a—fishing expedition—when they stopped this petitioner's car and by their dragnet, incased someone that will not let go short of exhausting every effort to establish his innocence.

We are fully cognizant of the Statutes in Kentucky (K.R.S. 186.510) which requires a person to exhibit their operator's license whenever called upon by a member of the Highway Patrol, but to permit the use of that cloak of pretended authority to consummate a search such as we have here is to ignore the guarantee of our basic law. We cannot erase from our minds the human element present in this case; officers, seeing themselves faced with an adversary, uncompromising, demanding his rights and protections and the Patrolmen's attempts to cover up and build a case, only make the true facts cry out louder and louder against them.

In the case of United States v. Bumbola, *et al.*, 23 Federal Reporter, 2d 696, District Judge Bryant of the District Court N. D., New York, had before him "an application made before trial upon affidavits to vacate a search and seizure made by members of the New York State Constabulary commonly called 'State Troopers' without a warrant and to suppress as evidence the use of the property seized thereunder, and to obtain a return of the property seized." The facts in brief are:

> "That on November 12, 1927, State Trooper Spelliey was at the Oneida Barracks, N. Y., and by his superior officer was ordered to go out on the highway after a five-ton Mack truck bearing a New York license No. 736-646, which his superior

officer informed him had just passed, going east toward Utica, N. Y. He was to check the driver of said truck, to ascertain whether or not he had a chauffeur's license and certificate of registration. In company with Trooper Wind he proceeded east and over-took said truck, and ordered the driver to stop. He asked the driver for his operator's license, which was produced. He asked for the certificate of registration, and the driver was unable to produce same. He then informed the driver that he would have to return to the barracks in order to check up the ownership of the truck."

The Court determined that:

"While the law gives an official, at the time of making an arrest, the right to search the person and the premises of the person for evidence of the crime, to say that authority given state officials to stop a driver and ask to see his license gives him authority to search the person, car, and luggage of the occupant is to set aside inalienable rights of American citizenship. Laws cannot and should not be enforced by such subterfuges. If a search was made in this case, as contended by defendants one was, the troopers in making same were trespassers."

In the case of Doncaster v. State, 197 Ind. 635, 151 N. E. 724, the Supreme Court of Indiana had before it an appeal in which the appellant was charged by indictment with having unlawfully and feloniously transporting liquor in an automobile. He was found guilty and given a fine of $1,000.00 and ordered imprisoned in the State Penitentiary for not less than

one nor more than two years. The complaint was made that the evidence and information upon which appellant was convicted was obtained by an unlawful search and seizure by the Sheriff of Marion County, Indiana. The Supreme Court of Indiana stated the evidence of the Sheriff as follows:

> "The sheriff of Marion County, Ind., as a witness on behalf of the state, testified that he saw appellant on the national road west of Indianapolis, about 30 minutes past 8 o'clock in the evening of December 14, 1923, at which time he was driving a truck east. On account of the speed at which the truck was moving, the sheriff turned around and overtook appellant in about a mile and one-half, when he turned his search-light upon appellant. The Sheriff asked what was in the truck, which question was not answered, and then the sheriff commanded appellant to open the front of the truck, to which appellant replied that it would not open because it was solid iron. The sheriff then took appellant out of the truck and searched him. After having searched appellant, and after going back to the truck, the sheriff asked him what kind of whiskey was in the car. Appellant first refused to answer, and then answered 'red whisky.' The sheriff then placed appellant under arrest, and, after having arrested him, proceeded to look in the truck."

The Court, in disposing of this case and reviewing the conviction stated:

> "The officer had no knowledge concerning appellant at the time he first saw him, or at the time

he stopped appellant and dragged him from his truck, that was a basis for probable cause to search appellant or his truck. What transpired thereafter cannot aid in making legal what was illegal before. The officer had no legal right to stop appellant, drag him from his vehicle and search him.

"When the search is unlawful in its inception, it is not made lawful by what was learned thereafter. Morgan v. State (Ind. Sup.), 151 N. E. 98; Batts v. State, 194 Ind. 609, 144 N. E. 24; Weeks v. United States, 232 U. S. 383, 34 S. Ct. 341, 58 L. ed. 652."

The Doncaster v. State case (*supra*), quotes with approval from Carroll v. United States, 267 U. S. 132, 45 S. Ct. 280, 69 L. ed. 543, as follows:

"It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. * * * But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

In the case at Bar, Ritter was in his own automobile at a place where he had a right to be and the evidence upon which Ritter was convicted was secured only after an unlawful search and seizure. The search and seizure being made unlawful by the fact that the car

was stopped by the Patrolmen, the driver forced from the car without having been placed under arrest or advised that any charge was placed against him, and the seizure being of goods in no way related to the charge upon which an arrest had been made. Only after the car had been stopped and the driver taken from the car, and questioned, was he apprised of any charge being made against him. The officer had no authority to force Loveless from the car and in the words of Doncaster v. State (*supra*), what transpired thereafter cannot aid in making legal what was illegal before. The officers had no legal right to stop appellant, drag (force) him from his vehicle and search him (vehicle).

It has been universally adopted and is universally recognized that an arresting officer following a lawful arrest may search and seize only such articles as (1) might be used to effect an escape or (2) as might tend to evidence his guilt of the offense for which the arrest has been made.

In the case of Ballou v. Commonwealth, 195 Ky. 722, 243 S. W. 922, the Court of Appeals stated the rule to be that "when an officer makes a lawful arrest * * * he is authorized to make a search of the arrested party's person for any weapon or other thing that might enable the prisoner to escape" and in the leading Kentucky case of Youman v. Commonwealth, 189 Ky. 152, 224 S. W. 860, it was held that the officer may search for and seize "any property connected with the offense for which he is arrested that may be used as evidence against him."

In the case of Elliott, *et ux.* v. State, 173 Tenn. 203, 116 S. W. 2d 1009, the Supreme Court of Tennessee had before it the question, "To what extent is a search without a warrant of the person and property of an accused justified by a lawful arrest for an alleged breach of the peace,—here a violation of a traffic law,—committed in the presence of the officer." This is the same question as presented in the case at Bar. The facts in the Elliott case disclose that during the late afternoon of Christmas Eve, 1937, Homer Elliott and his wife and his wife's sister were driving south on Highway No. 45 in the direction of Jackson, Tennessee. Sergeant Townes and Patrolman Cook of the Tennessee Highway Patrol charged that the defendant's car was being operated at a rate of between 40 to 45 miles an hour through the settlement of Hicksville which they regarded as a restricted zone under the provisions of Chapter 245 of the Public Acts of 1937 and *prima facie* evidence of reckless driving on the part of Mrs. Elliott. The officers followed defendant's car only a short distance and stopped it and after stopping the car Sergeant Townes went to defendant's car where he asked to see the driver's license. They examined the license and found them to be regular and then asked the driver why they were driving 40 or 45 miles an hour through the settlement of Hicksville. Mrs. Elliott replied that she didn't realize that they were driving that fast and Sergeant Townes then said that he would have to place her under arrest for that offense, *e. g.*, reckless driving. Having made the arrest he then attempted to open the trunk of the car and

found it locked. He asked both Mr. and Mrs. Elliott for the key and both said they did not have it, whereupon the officer took the keys from the ignition, unlocked the rear of the car and found ten cases of liquor. The Court in reversing the conviction of Mr. and Mrs. Elliott on the charge of transporting and possessing liquor came to the following conclusion:

> "So tested, conceding the good faith and reasonableness of the grounds of the officer making this arrest for reckless driving, we are constrained to hold that the officer exceeded his authority in searching the rear compartment of the car wherein he found the liquor for possession and transportation of which this prosecution was brought. This search, and the articles thus discovered, had no reasonable relation to the offense for which the arrest was made. The articles searched for and found afforded no evidence of reckless driving. The search, quite obviously, was not for the purpose of disarming the prisoners, or securing proof of their guilt of that offense. The evidence thus sought and obtained was of another and wholly unrelated offense, and it having been obtained by an unlawful search, the objection to the testimony of the officers should have been sustained."

Lest we forget—

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Amendment IV to the United States Constitution.

The Fourteenth Amendment prohibits the States from abridging the privileges or immunities of citizens of the United States, or depriving persons of life, liberty, or property without due process of law, and from denying to any the equal protection of the laws. So with equal vigor if not surpassing the Fourth Amendment our basic rights are guaranteed to—

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Section I, Fourteenth Amendment to the United States Constitution.

Accordingly, the trial court should have sustained petitioner's motion to quash the warrant.

Petitioner Was Caused to Testify Against Himself by the Introduction in Evidence of the Illegally Gotten Contraband.

Nemo tenetur seipsum accusare. This guarantee of the Fifth Amendment to the Constitution of the United States is so closely related to the Fourth Amendment heretofore discussed that at times it is hard to tell where the one stops and the other starts. No principle of the common law is more firmly estab-

lished and rooted in our jurisprudence than that which protects the defendant from self-incrimination. This principle is too well known and established for the citation of authorities.

It was held in the case of United States v. Lefkowitz, 285 U. S. 452, 52 S. Ct. 420, 76 L. ed. 877; that a general exploratory search of one's premises upon which a lawful arrest is made under a warrant charging violation of the liquor laws, and the seizure of the properties there found, for use as evidence, are violative of constitutional provisions which prohibit unreasonable searches and seizures and states that no one shall be compelled to bear witness against himself.

Under the provisions of the Kentucky Statutes the Patrolmen could, when acting in good faith, stop the vehicle of your petitioner and inquire to see the operator's license of the driver, but to order him out of the car and search it before placing him under arrest and thereafter confiscating petitioner's property and the property of Loveless and using it against him upon his trial is so far afield of justice that it takes on the aspect of an act of a Gestapo.

We again refer this Court to the case of Cox v. State (*supra*), wherein that Court held:

> "That where the primary motive of state highway patrolmen in stopping a motorist for the ostensible purpose of inspecting his driver's license was to see whether he was illegally transporting intoxicating liquor, which offense they had no sufficient probable cause to suspect, their acts in stopping such motorist, examining the contents

of his automobile, and arresting him upon a charge of illegal transportation of intoxicating liquor discovered through such investigation, amounted to an illegal search and had the effect of requiring the motorist to give evidence against himself, thereby violating his constitutional rights."

How shall I be free in a free country? Freedom was secured by force of arms, must it now be retained by such measures? Heaven forbid. But through the protection afforded the rich and poor alike the guilty and the innocent alike by this Court do I know we're free and are in truth free. Truth—when we searched the record in this case for the truth, we find it hid behind such fantastic statements as were made by the Patrolmen that it took them thirty to forty-five minutes to subdue this petitioner (R. 39, 49) a one legged man.

CONCLUSION.

We look with confidence to the action of this Court; that it will sustain petitioner's request for a writ of certiorari; will reverse the action of the Court of Appeals of Kentucky; will direct the suppression of the warrant and the evidence introduced against your petitioner.

Respectfully submitted,

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